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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,818	11/14/2001	Bryan Jeffery Moles	SAMS01-00153	5813

7590

02/08/2006

Docket Clerk
P.O. Drawer 800889
Dallas, TX 75380

EXAMINER

PHAM, TUAN

ART UNIT	PAPER NUMBER
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2643

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

09/992,818

Applicant(s)

MOLES ET AL.

Examiner

TUAN A. PHAM

Art Unit

2643

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED _____ FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 11, 22, 24 and 26.
Claim(s) rejected: 1-4, 6-8, 10, 12-15, 17-19, 21 and 25.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
see attached pages
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: See attachment.


DUC NGUYEN
PRIMARY EXAMINER

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on 01/25/2006 have been fully considered but they are not persuasive.

On page 14 of the Remark to response to the Final Office Action, applicant traverses to the rejections by arguing that the reference of Martinez (Pub. No.: US 2002/0142792) fails to teach a wireless device which, upon detecting a behavior service upon entering the service area automatically sets operation of the wireless device to conforms to the behavior defined by the behavior service, as recited in independent claims 1, 3, 7, 12, 14, and 18.

In response to applicant's arguments as stated above, the Examiner respectfully disagrees with the Applicant's argument. Martinez teaches a cellular telephone operates to select user preference information based on a the movement of a cellular telephone from the public network to the private network to cause the cellular changing the personal setting of the user (see figure 1, col.2, [0021-0025]. For example, the working day begins at 9:00 AM, the cellular will detects the working area at this time and the it will select the set of user preference information used in the work environment).

Furthermore, the applicant argue that Martinez fails to teaches the wireless device which upon detecting unavailability of the behavior service following previous availability of the behavior service, automatically restores operation of the wireless device to a state existing prior to automatic setting of the operation of the wireless

device to conform to the behavior defined by the behavior service. The Examiner respectfully disagrees with the Applicant's argument. Martinez teaches a cellular telephone operates to select user preference information based on a the movement of a cellular telephone from the working network to home environment to cause the cellular changing the personal setting of the user (see figure 1, col.2, [0021-0025]. For example, the working day over at 5:00 PM, the cellular will detects the home area at this time and the it will select the set of user preference information used in the home environment).

On page 15 of the Remark to response to the Final Office Action, applicant traverses to the rejections by arguing that small area transmitter can be a Bluetooth.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., Bluetooth) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Base on the above rational, it is believed that the claimed limitations are met by the reference of Martinez and Westfield, the final rejection is still maintained.

Allowable Subject Matter

2. Claims 11, 22, 24, and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Tuan A. Pham** whose telephone number is (571) 272-8097. The examiner can normally be reached on Monday through Friday, 8:00 AM-5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Curtis Kuntz can be reached on (571) 272-7499 and

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have question on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit 2643
February 4, 2006
Examiner

Tuan Pham


DUC NGUYEN
PRIMARY EXAMINER